

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SynQor, Inc.

Plaintiff,

v.

Cisco Systems, Inc.,

Defendant.

Civil A. No. 2:14-cv-286-MHS-CMC

JURY TRIAL DEMANDED

SynQor, Inc.

Plaintiff,

v.

Vicor Corporation,

Defendant.

Civil A. No. 2:14-cv-287-MHS-CMC

JURY TRIAL DEMANDED

JOINT RESPONSE REGARDING REQUEST FROM AAA ARBITRATION PANEL

I. SynQor's Position

SynQor opposes any delay in the upcoming trials. A pretrial conference for SynQor's case against Cisco is set for September 23, 2014 ('286 case, Dkt. 21 at 2), and a pretrial conference for SynQor's case against Vicor is set for September 24, 2014 ('287 case, Dkt. 5 at 2). For each case, "[a]t the final pretrial conference, the parties will be assigned a specific trial date beginning within four weeks of the final pretrial conference." '286 case, Dkt. 21 at 9; '287 case, Dkt. 5 at 9. SynQor expects each trial to take at least a week. SynQor needs its damages expert in attendance at each trial, and the arbitration panel asks this Court to carve out a substantial portion in the middle of the potential trial period, October 8-17. Dkt. 116-1 (July 10, 2014 letter from Mr. Needle.). It is difficult to see how such a schedule would permit two trials to go forward around it.

SynQor originally filed this lawsuit on January 28, 2011 (6 months before the arbitration demand was filed). *Compare* '54 case,¹ Dkt. 1 *with* Dkt. 116-1 at 1. Jury selection was initially set for July 7, 2014, and later changed to begin within the four weeks after June 25, 2014. '54 case, Dkt. 172; '54 case, Dkt. 262 at 1, 6. Trial has already been delayed from July 2014 to late September/October 2014 when the case was severed and new scheduling orders issued. '54 case, Dkt. 368 at 7. SynQor respectfully requests that the trials not be delayed any further.

Vicor uses this submission to argue that its trial should proceed first. SynQor believes this is not the appropriate vehicle to resolve the order of trial but that, in any event, the action against Cisco should be tried first if the cases remain separate. To provide just one example why this is so, SynQor's case against Cisco is largely a direct infringement case, whereas Vicor is accused of indirect infringement. As such, Vicor has intent and knowledge based defenses that Cisco does not. Therefore, if Vicor were to prevail on non-infringement as it posits (e.g., on intent), SynQor would still have a claim against Cisco for its direct infringement. In contrast, if the Cisco case goes first and SynQor prevails as to its products incorporating Vicor converters, then those infringing units can be removed from the Vicor case.

¹ "'54 case" refers to Case No. 2:11-cv-54 (E.D. Tex.) from which these cases were severed.

To take another example, Vicor contends that the hypothetical negotiation for purposes of determining reasonable royalty damages should focus not on the value of the claimed invention as a whole to Vicor and its directly infringing end customers, but rather only on the value of the invention to Vicor's accused bus converters. SynQor contends that Vicor's position is legally flawed ('287 case, Dkt. 97) and should be excluded. But if Vicor were to prevail on its arguments, Cisco will then contend that SynQor cannot recover damages from Cisco on any sales Vicor has made to Cisco due to patent exhaustion. SynQor would thus be shortchanged by Vicor's flawed damages theory, which Cisco has not adopted. Proceeding with the trial against Cisco first would obviate this problem. Vicor's counterclaims are similarly no reason for the Vicor trial to proceed first. Those claims are meritless and should be dismissed. '287 case, Dkt. 14. And regardless, having Vicor's trial follow Cisco's all within October, does not present any prejudicial delay.

Vicor's purported conflicts that allegedly preclude it from proceeding other than prior to October 8, 2014, do not justify setting the trial order contrary to SynQor's preference to adjudicate its action against Cisco first. Vicor and its counsel have known about the four-week trial window since the scheduling orders issued on April 1, 2014, and have never raised these issues.

II. Cisco's Position

Cisco has no objection to the Court addressing this potential conflict with SynQor's expert's schedule in any way that the Court deems most appropriate. Cisco can be prepared to try the case anytime within the trial window that the Court has ordered. SynQor has also raised a variety of arguments about whether its case against Vicor or its case against Cisco should be tried first. Cisco would be happy to address those issues if the Court so desires, but they are independent of SynQor's expert's apparent scheduling conflict.

III. Vicor's Position

Vicor does not oppose Mr. Needle's request to the extent that the Vicor trial can be scheduled and completed prior to October 8, 2014. Vicor does, however, oppose the request to the extent that it would require Vicor's trial to commence after October 17, 2014.

Vicor is continuing to lose business because of SynQor's meritless infringement accusations. *See* ECF No. 119. Vicor therefore requests the earliest available trial date so that SynQor's patent infringement claims and Vicor's counterclaims can be resolved expeditiously. Allowing Vicor's trial to proceed in early October, before the Cisco trial, would also best serve the interests of judicial economy. A finding of non-infringement with respect to the Vicor converters would remove those products from the Cisco trial. Conversely, a Cisco-first trial will not resolve the dispute between SynQor and Vicor because of the indirect infringement and damages issues that do not overlap with the Cisco case. Vicor disagrees with SynQor's substantive arguments favoring a Cisco-first trial, but given the Court's stated preference for a short submission, will respond to those arguments only if the Court so requests.

Vicor's counsel and experts also have certain pre-existing conflicts in late October and November, which were communicated to SynQor's counsel as soon as Mr. Reed's conflict was identified. Vicor's lead trial counsel, Charles Verhoeven will be participating in a Markman hearing on October 28 in *Rockstar Consortium US LP and Newstar Technologies LLC v. Google Inc.*, E.D. Tex. Civil Action No. 2:13-cv-893-JRG-JSP. On November 3, Mr. Verhoeven and Sean Pak will be in San Diego for the pretrial conference in *Peregrine Semiconductor Corporation v. RF Micro Devices, Inc. et al*, S.D. Cal. Civ. Action No. 3:12-CV-0911-H (WMC). They both will be in San Diego preparing for that trial the following week with trial scheduled to commence on November 12, 2014 and continuing on through November 26, 2014. Vicor's invalidity expert also has a pre-existing conflict on October 15-17, 2014, and Vicor's damages expert has a pre-existing conflict from October 17-31, 2014. A trial during the early part of October would avoid the need for these experts to move their existing conflicts.

Dated: July 18, 2014

Respectfully submitted,

/s/ David T. DeZern

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on July 18, 2014.

/s/David T. DeZern

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